COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 283 of 2002

Makhan Singh. ... **Appellant.**

Versus

Sri Anand Singh Bisht
and another. … **Respondents.**

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award, dated 13-08-2002, passed in M.A.C.T. Petition No. 132 of 2001, Makhan Singh Vs. Sri Anand Singh and others, by the Motor Accident Claims Tribunal/ District Judge, Nainital ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has dismissed the claim petition of the claimant. Aggrieved, the claimant-appellant has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground that the finding has been recorded by the Tribunal on Issue No. 2 that the claimant has suffered loss of Rs. 16,250/-, which is perverse and rejection of the claim petition on the plea of compromise raised in the written statement as also finding on Issue No.3 regarding maintainability of claim petition are illegal and are liable to be quashed.

Brief facts of the case are that claimant Makhan Singh filed claim petition before the learned Tribunal alleging therein that on 27-11-1997 at 1 p.m. at Kaladhungi Road, Haldwani, the claimant was standing on the ***Kuchcha*** side of the road. In the meantime, he was hit by Jeep No. U.P.02-C-6454 driven rashly and negligently by its driver with the result the claimant became unconscious and he was rushed to the hospital. Later-on, the claimant was referred to

higher center for medical treatment and was brought to Vivekanand Hospital and Research Centre Moradabad, where he remained hospitalized for 28 days and has incurred about Rs. 70,000/- on his treatment. Even them, the claimant has become physically handicapped and permanently disabled at the age of 25 years. Due to this accident, the claimant has lost every prospect of job, marriage, etc., therefore, claim petition has been preferred for compensation of Rs. 7,00,000/- against the owner and insurer of the offending Jeep No. UP 02C-6454.

The O.P.No.1, owner of the Jeep in question, filed his written statement. It has been asserted that no accident took place on 27.11.1997; that the jeep was detained in the police station Kaladhungi on 28.11.97 on the pretext that it was involved in the accident. Then a compromise was entered into between the parties and the answering O.P. finally settled the matter on payment of Rs. 10,000/-, which were paid in cash half amount each on 28th and 29th November, 1997; that the jeep in question was duly insurer with National Insurance Company on the date of accident, therefore, the liability, if any, rests on the Insurance Company. Plea for refund of amount of Rs. 10,000/- has also been raised.

O.P. No.2, Insurance Company, contested the claim petition by filing its written statement asserting therein that the petition is not legally maintainable; that the claimant has not filed any certificate in proof of his age and income; that the driver of the Jeep was driving the vehicle at moderate speed and in case of collusion between the claimant and the owner of the vehicle, the Insurance Company has a right to contest the case under Section 170 of the Act. The owner is required to satisfy the court regarding validity of all necessary documents in respect of the vehicle involved in the accident.

On the pleadings of the parties, the learned Tribunal framed as many as four issues in the case. On Issue No.1, the

learned Tribunal came to the conclusion that the motor accident has occurred due to rash and negligent driving by the driver of the Jeep resulting into injuries to the claimant. On Issue No.2, the learned Tribunal has observed that in all the claimant has suffered loss worth Rs. 16,280.40 but in view of the plea raised in the written statement by the owner of the vehicle, the matter was finally settled on payment of Rs. 10,000/- between the owner of the vehicle and the claimant and as to assessment of loss, the Tribunal has found that the claimant has suffered loss of Rs. 16,280.40 P. On Issue No. 3, the Tribunal has held that for want of Policy Cover-Note, valid driving licence, registration certificate, etc. on record, the claim petition is not maintainable. On Issue No.4, framed on the point of relief, the learned Tribunal has held that the claimant has failed to file Insurance Policy, copy of registration certificate, valid driving licence, etc. despite opportunity given to the claimant, therefore, the claimant has been held not entitled to any compensation against the owner of the vehicle. Ultimately, the claim petition has been rejected, which gave rise to the present appeal.

We have heard learned counsel for the appellant as well as learned counsel for the respondent nos.2-Insurance Company, Mr. D.S.Patni, and have carefully gone through the entire material on record including the impugned judgment and award.

It has been submitted on behalf of the appellant that the learned Tribunal has not considered the evidence on record so as to arrive at the just amount of compensation particularly on the basis of the statement of the claimant-appellant before the learned Tribunal in which he has stated that he has spent amounts of Rs. 70,000/- in his treatment, supported by bills of expenditure. We have also been referred to the findings arrived at by the learned Tribunal that the claim petition is not maintainable. We have closely perused the entire lower court record and the proceedings of the Tribunal. First, we come to the on oath statement of the claimant Makhan Singh, P.W.1. This witness has stated in his examination-in-chief that on

27.11.1997 at 12.30 p.m. he met with an accident in front of flour mill, when Jeep No. 6454 going from Haldwani to Ramnagar in high speed and driven rashly and negligently hit him, thereby he became unconscious and he was brought to hospital by some village mates. Then he was taken to Moradabad for treatment, where he was admitted for one month, and on his treatment, he has incurred expenses worth Rs. 70,000/-. To meet the medical expenses, his mother was compelled to sell all her jewellery. He was the only bread earner for his family and his mother is dependent on him. He used to earn Rs. 1,500/- per month. Due to this accident, he has suffered mental and physical pain and has lost mental balance. He has not recovered so far and has become unfit to do any work. In the last line of his on oath statement, this witness has stated that he has produced paper no. 7C/4 to paper no. 7-C/113, therefore, he be awarded amount of Rs. Seven lacs from the opposite parties. This is all what the appellant has stated before the learned Tribunal. We have gone through the medical prescription slips and the bills and vouchers filed on record. It appears that the claimant was admitted in Vivekanand Hospital and Research Centre Moradabad on 28.11.1997. The ailment has been shown head injury. On the record, a number of bills/cash memos have been filed. From the perusal of those bills, the genuineness of the papers creates doubt. Neither the name of the Medical Store from where the medicines have been purchased has been mentioned, nor any serial number of the receipt is printed thereon, rather the column of serial number has been left blank, nor the signature of the person issuing the receipts has been put on the receipts. Moreover, on the findings of Issue No.2, the learned Tribunal has elaborately dealt with this point in detail.

The crux of this case is that the O.P.No.1, Anand Singh, has pleaded that on 28-11-97 the case between the claimant and O.P. was settled on payment of Rs. 10,000/- and the amount has already been paid to the claimant on 28.11.1997 and 29.11.1997. The claimant as P.W.1 in his statement on oath could not muster courage

to deny this fact taken in the written statement by the owner of the vehicle. It can safely be presumed that had there been no truth in the plea taken by the owner of the vehicle that the dispute between the parties stood settled by way of compromise on 28.11.1997, this witness must have confronted or denied this allegation in a single sentence. Admittedly, the accident had taken place on 27.11.1997. The F.I.R. in the case was also lodged on the same day by Jaspal Singh (P.W. 2), who is the brother of the claimant. The evidence of P.W.2, Jaspal Singh was recorded before the Tribunal on 13.5.2002. He is scribe of the F.I.R. This witness in his testimony has not stated anything about the fate of the F.I.R. lodged by him. He is the real brother of the injured Makhan Singh. Even if it is presumed that no compromise between the injured and the owner of vehicle took place and such settlement has no legal value, this witness must have thrown some light about the investigation/fate of the case on the basis of F.I.R. lodged by him. All these circumstances, mentioned above, are fetal to the case of the appellant and considering all the aspect of the case, we have no hesitation to hold that in this case, the claimant-injured has not come before the Tribunal with clean hands. In the present case, it was obligatory on the claimant to have denied the plea of the settlement of dispute taken by the owner in his written statement, paper no. 18-Kha. The learned Tribunal has observed that the loss suffered by the claimant-appellant was to the tune of Rs. 16,280.40 and the dispute stood settled finally between the parties. One more important circumstances, which goes against the appellant in the present case is that P.W.1 Makhan Singh has nowhere stated in his evidence that the owner and the insurer of the vehicle have deliberately failed to produce the relevant papers viz. driving licence, registration certificate, Insurance Policy, etc. before the learned Tribunal so as to cause damage to the case of the claimant. In the memo of appeal, the appellant has not taken any case that the owner of the vehicle, Anand Singh, respondent no.1, has deliberately failed to fulfill the legal obligation on his part before the Tribunal. The conclusion of the proceedings after framing of Issues in the Case, i.e. 3.4.2002 till the date of evidence of claimant and delivery judgment,

i.e. 13.8.2002, covered a considerable period. The appellant could have approached the Tribunal for a direction to the owner to furnish all necessary documents before the Tribunal, but this too has not been done. Therefore, from any view of the matter, we find nothing favourable to the appellant so as to interfere with the findings of the learned Tribunal, especially when the appellant has not come before the Tribunal with clean hands and for other fatal circumstances, as mentioned earlier. Therefore, we have no option but to affirm the findings of the Tribunal. There is no merit in this appeal.

The appeal is dismissed. The judgment and order under appeal is upheld. No order as to costs.

28-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP